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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,711	03/04/2004	Frank Sauer	076326-0275	3391
22428 7590 03/31/2008 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
FLEMING, FAYE M				
ART UNIT		PAPER NUMBER		
3616				
MAIL DATE		DELIVERY MODE		
03/31/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,711

Applicant(s)

SAUER, FRANK

Examiner

Faye M. Fleming

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-27 and 36-42 is/are allowed.
- 6) ☒ Claim(s) 28-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (5,082,310) in view of Fujimura (JP09183375A).

Bauer discloses a decorative skin layer (decorative element) 130 is connected to the closure (cover cap) 105 and covers at least one of the frangible webs (tear-open edge) 124, see figure 13. The decorative element 130 is fastened to the closure (cover cap) 105 via the foam layer 128, see col. 4, lines 33-35 and lines 52-62 for fastening details. As noted in col. 7, lines 25-30 the decorative element 130 includes frangible seams (predetermined breaking points) 132 and as shown in figure 3 and described in col. 7, lines 40-43 the frangible seams 132 are aligned with and matching the pattern of weakening webs 124. Perforations 115, 117 are provided as the predetermined breaking points. The decorative element comprises a softer carrier material 128 and a harder covering layer 105; and wherein a material weakening 132 as the breaking point is provided in the covering layer. A rear side of the covering layer includes the material weakening 132 and wherein the carrier material engages into the material weakening, as shown in figure 13. The decorative element comprises plastic.

Bauer teaches the claimed invention except for perforations. Fujimura teaches an airbag cover comprising perforations 51. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have perforations provided as the predetermined breaking points to

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provide improvement in workability upon deployment of the airbag. With respect to forming the perforations, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

3. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (5,082,310) in view of Preisler (2003/0020263).

Bauer teaches the claimed invention except for a softer carrier material and a harder covering layer. Preisler teaches an airbag cover comprising a soft outer layer 110 and a harder material is formed behind the skin, see [paragraph 0054]. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material of the device, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

4. Claims 23-27 and 36-42 are allowed.

Response to Arguments

5. Applicant's arguments with respect to claims 28-35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye M. Fleming whose telephone number is (571) 272-6672. The examiner can normally be reached on M-F (9:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Faye M. Fleming/
Primary Examiner, Art Unit 3616